

THE IMPACT OF ANTI-TERRORISM LAWS ON HUMAN RIGHTS

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Abstract

Terrorism, by violently disrupting the right to life, dignity, and freedom, stands as one of the gravest violations of human rights. Consequently, countries worldwide have enacted anti-terrorism legislations to punish terrorists and deter such heinous acts. The citizens' trust in the government's ability to safeguard their security forms the cornerstone of the modern-day democratic system. India, having faced several major terrorist attacks—including the Bangalore Cafe Bombing, the Poonch-Rajouri Attack, the 2019 Pulwama Attack, and the 26/11 Mumbai Attacks—necessitated a robust legislative framework to maintain the sovereignty, unity, and peace of the nation. In 2017 alone, India witnessed approximately 1000 terrorist incidents, underlining the importance of stringent anti-terrorism laws.¹

The legislative journey commenced in 1967 with the enactment of the Unlawful Activities (Prevention) Act (UAPA),² followed by the Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987,³ specifically to counter insurgency in Punjab. These laws provide extensive powers to law enforcement agencies to act decisively against suspected terrorists. Nevertheless, growing instances of misuse have sparked debates about curtailing the excessive powers granted under such legislations. The misuse of anti-terrorism laws, often employed to suppress dissent or opposition, constitutes a direct assault on the Fundamental Rights enshrined in the Indian Constitution.

The Fundamental Rights, envisioned as sacrosanct by the framers of the Constitution, are zealously protected by the Hon'ble Supreme Court of India.⁴ Instances where anti-terrorism laws like the UAPA are used to incarcerate social media influencers or peaceful protesters raise alarming questions about the erosion of the Right to Freedom of Speech and Expression under Article 19.⁵ Therefore, while anti-terrorism laws are indispensable for national security, the legislative framework must incorporate sufficient safeguards to prevent their misuse and preserve the Fundamental Rights of the people.

Keywords- Human Rights, Terrorism, UAPA, POTA

I. Introduction

As we step into the 21st century, the world has realised the human cost of terrorism and the need to counter the same. Violent terrorist acts have become the reason why thousands of families have been ruined and countless futures destroyed. There needs to be no elaboration

regarding the fact that terrorism is one of the gravest violations of human rights. The devastating impact it has on the right to life, dignity and freedom has propelled countries all over the world to enact Anti-Terrorism laws in an attempt to counter terrorism and to punish the terrorists in a way that sets an example for individuals who even think of carrying out such a heinous act.¹ After all, it is the trust of the citizens on the commitment of the government to keep working towards the security of the masses that the modern-day notion of democracy succeeds in functioning. India has been subjected to numerous terrorist attacks. Attacks such as the Bangalore Cafe Bombing, the Poonch-Rajouri Attack, the 2019 Pulwama Attack, the 26/11 terrorist attack mandate the existence of a strict legislative framework that justifiably punishes the individuals who pose a threat to the sovereignty, peace and unity of our country. The need for anti-terrorism laws can be understood by the fact that in 2017 alone, 1000 terrorist incidents took place.²

The Legislative intervention began in the year 1967 with the enactment of the Unlawful Activities (Prevention) Act. Further, the enactment of the Terrorist and Disruptive Activities (Prevention) Act, 1987 became a necessity due to rising terrorist activities in the State of Punjab.³ These legislations provide sweeping powers to the government and law enforcement authorities to take appropriate action against suspected or confirmed terrorists. In times of need, these laws do provide immense empowerment to the authorities.⁴ However, of late, various instances of misuse of anti-terrorism legislations have been observed, which have led to debates pertaining to the need to curb the sweeping powers given to authorities. Governments have started misusing Anti-Terrorism laws to crack down on dissent and to silence the voices that pose a threat to the stability and power of their government.

Fundamental Rights are the gem of the Constitution. The framers of the Constitution have bestowed the power to protect the Fundamental Rights from encroachment on the Hon'ble Supreme Court of India.⁵ The misuse of Anti-Terrorism legislations is a direct attack on the Fundamental Rights guaranteed by the Constitution. For instance, when a social media influencer gets jailed under the provisions of the UAPA, it acts as a direct threat to the Fundamental Right to Freedom of Speech and Expression guaranteed under Article 19.⁶ The legislative framework should attend to the serious concerns of misuse and should put in place safeguards to ensure that no government finds itself in a position to misuse an anti-terrorism legislation to the detriment of the Fundamental Rights of the people.

II. Conceptual Framework

¹“Lumina, C., 2007. Counter-terrorism legislation and the protection of human rights: A survey of selected international practice. *African Human Rights Law Journal*, 7(1), pp.35-67.”

²“Williams, G., 2014. Anti-terrorism laws and human rights. *REV. Const. Stud.*, 19, p.127.”

³ Ibid

⁴“Fitzpatrick, J., 2003. Speaking law to power: the war against terrorism and human rights. *European Journal of International Law*, 14(2), pp.241-264.”

⁵“Gearty, C., 2005. 11 September 2001, Counter-terrorism, and the Human Rights Act. *Journal of Law and Society*, 32(1), pp.18-33.”

⁶Ibid

Definition and Scope of Terrorism

The simplest way to understand terrorism would be to accept the first definition that comes up after a Google search on the subject. Terrorism, in the simplest of words, could be understood as the act of killing ordinary people for political purposes. However, the evolving geopolitical dynamics have rendered the aforementioned definition incomplete. In a world that runs on computers and is interconnected in a way like never before, terrorism is not only limited to the act of wearing an IED Jacket and detonating it in a room full of innocent people.⁷ The dimensions of terrorism extend far beyond that. In the age of AI and Digital Power Paradigms, cyber terrorism is as harmful as physical acts of terrorism. Thus, attempting to straitjacket the concept of terrorism into a single definition would limit the effectiveness of its analysis.⁸

Although the term "terrorism" lacks a universally accepted legal definition, it is generally understood as a coercive strategy that employs or threatens to employ violence with the primary objective of instilling fear, thereby compelling political or ideological concessions. In legal discourse, modern terrorist violence is differentiated from conventional acts of violence through the conceptual framework known as the "terrorist triangle," wherein actor A perpetrates an attack upon victim B with the intention of influencing or coercing actor C—typically a government or authority—to alter a particular policy or course of action favoured by A.⁹ This dynamic operates through the deliberate targeting of innocent individuals, thereby generating widespread fear and applying indirect pressure on third-party decision-makers.¹⁰

Contemporary manifestations of terrorism encompass a broad spectrum of violent acts, often indiscriminately directed against civilian populations, military installations, and State functionaries alike. The distinctive feature of such acts lies in their unpredictability and symbolic impact, which serve to amplify their psychological and political consequences.

What Constitutes Anti-Terrorism Laws

The Anti-Terrorism legislative framework equips the authorities with sweeping powers to free them of any sort of legislative or bureaucratic intervention and fight terrorism effectively. The starting point of a terrorist activity has been traced, in most cases, to questioning the territorial integrity of India. The Unlawful Activities (Prevention) Act, 1967 was enacted primarily to deal with associations and activities that questioned the territorial integrity of India.¹¹ The Act was a self-contained set of laws that included provisions for declaring secessionist groups to be illegal, adjudication by a tribunal, control of money and places of employment of unlawful associations, sanctions for various members of these associations, and other provisions. In

⁷“Moeckli, D., 2008. *Human Rights and Non-discrimination in the 'War on Terror'*. Oxford University Press, USA.”

⁸ Ibid

⁹“Daruwala, M. and Chaltin, A., 2007. *Stamping out rights: The impact of anti-terrorism laws on policing*. CHRI.”

¹⁰ Ibid

¹¹“Bedi, J., 2022. Tenuous Legality: Challenges within the Anti-Terrorism Laws in India. *Issue 1 Indian JL & Legal Rsch.*, 4, p.1.”

particular, the law penalizes the use of bombs, dynamite, or other explosive substances, along with inflammable materials, firearms, lethal weapons, or hazardous chemicals—including biological, radioactive, or nuclear agents. Any act committed using such means, or any other method whatsoever, shall fall under this provision if it is intended or likely to result in one or more of the following consequences:

1. Death or bodily injury to individuals;
2. Damage, loss, or destruction of property;
3. Disruption of essential supplies or services vital to the life of the community, whether in India or abroad; or
4. Destruction of any property linked to national defence or related to the functioning of the Government of India, any State Government, or their respective agencies.

Furthermore, the provision extends to the use or attempted use of criminal force, or the threat thereof, with the aim of intimidating or overawing public officials in the discharge of their lawful duties.¹² The killing or attempted killing of any public functionary for the same purpose also constitutes a punishable offence under this law. Such actions are considered serious threats to public order, democratic institutions, and the rule of law, and therefore attract stringent legal consequences.

III. Evolution of Anti-Terrorism Laws in India

Indian Legal Framework

The Terrorist and Disruptive Activities (Prevention) Act, 1987

The Terrorist and Disruptive Activities (Prevention) Act, 1987—popularly known as TADA—was one of India's earliest and most controversial anti-terrorism legislations, introduced with the objective of combating the rising threats of terrorism and organised crime during the 1980s. Enacted against the backdrop of increasing insurgency, separatist violence, and extremist movements, particularly in Punjab and Kashmir, the Act sought to empower law enforcement agencies with enhanced authority to curb activities deemed to endanger national integrity and internal security.¹³ TADA was a comprehensive statute that not only defined what constituted a "terrorist act" and "disruptive activity," but also prescribed stringent procedures and evidentiary standards that marked a significant departure from ordinary criminal jurisprudence.

One of the most contentious features of TADA was its definition of a "terrorist act", which included actions intended to overawe the government, strike terror among the people, or adversely affect the harmony between different communities. Similarly, "disruptive activities" were defined in wide terms to include acts that challenged the sovereignty, unity, and integrity of India.¹⁴ The breadth and vagueness of these definitions often resulted in the prosecution of individuals whose actions were not clearly or necessarily linked to terrorism. The law permitted extended periods of pre-trial detention, often up to 180 days, without filing a formal charge

¹²Ibid

¹³"Roy, A. and Singh, U.K., 2015. The masculinist security state and anti-terror law regimes in India. *Asian Studies Review*, 39(2), pp.305-323."

¹⁴ Ibid

sheet, and imposed stringent restrictions on the grant of bail, effectively placing the burden on the accused to prove their innocence even before trial—a principle alien to traditional criminal law that follows the presumption of innocence.¹⁵

Another controversial and legally significant departure from standard criminal procedure was the provision that allowed confessions made to a police officer of the rank of Superintendent or above to be admissible in court as evidence.¹⁶ This went against the general rule under the Indian Evidence Act, 1872, which treats confessions to police officers as inadmissible due to the high risk of coercion and abuse. The admissibility of such confessions under TADA raised serious concerns regarding custodial torture, forced confessions, and violation of fundamental rights under Articles 20 and 21 of the Constitution, which guarantee protection against self-incrimination and arbitrary deprivation of life and liberty.¹⁷

In order to ensure expedited trials, the Act also provided for the constitution of special designated courts with exclusive jurisdiction to try offences under TADA. These courts were authorised to conduct in-camera proceedings and to keep the identity of witnesses confidential. While these measures were justified on grounds of national security and witness protection, they also curtailed the accused's right to a fair and open trial, a cornerstone of due process in democratic legal systems.¹⁸ Moreover, the law allowed for attachment of property believed to be linked to terrorist or disruptive activities, often without adequate procedural safeguards.

Over time, it became evident that the provisions of TADA were being widely misused by law enforcement authorities, often to target political dissidents, minorities, and marginalised communities. Reports emerged of arbitrary arrests, prolonged detentions without trial, custodial violence, and very low conviction rates, which cast serious doubt on the effectiveness and constitutionality of the legislation.¹⁹ The National Crime Records Bureau (NCRB) statistics revealed that out of thousands of cases registered under TADA, the conviction rate was disproportionately low—highlighting the law's overreach and its impact on civil liberties.

Faced with mounting criticism from human rights organisations, civil society, legal scholars, and the judiciary, and in light of its repeated misuse and constitutional challenges, the Government of India allowed TADA to lapse in 1995, by not renewing it beyond its sunset clause. However, the legacy of TADA lived on through subsequent anti-terror laws such as the Prevention of Terrorism Act, 2002 (POTA), and later, provisions of the Unlawful Activities

¹⁵“Kalhan, A., Conroy, G.P., Kaushal, M. and Miller, S.S., 2006. Colonial continuities: Human rights, terrorism, and security laws in India. *Colum. J. Asian L.*, 20, p.93.”

¹⁶“Bedi, S. and Paripurna, A., 2025. The Architecture of Counter-Terrorism Legislation in India and Indonesia: An Analysis of Issues and Challenges. *Yuridika*, 40(1), p.97.”

¹⁷“Mohapatra, M., 2004. Learning lessons from India: the recent history of antiterrorist legislation on the subcontinent. *J. Crim. L. & Criminology*, 95, p.315.”

¹⁸ Ibid

¹⁹ Ibid

(Prevention) Act (UAPA), many of which retained or replicated TADA's contentious features. The experience with TADA continues to serve as a critical point of reflection in debates on the balance between national security and fundamental human rights, the limits of State power, and the importance of procedural safeguards in anti-terrorism legislation.

Prevention of Terrorism Act (POTA), 2002

In the aftermath of two significant and traumatic events—the hijacking of Indian Airlines flight IC-814 in December 1999 and the terrorist attack on the Indian Parliament in December 2001—there emerged an urgent and widespread demand for a more stringent and robust legislative framework to address the rising threat of terrorism.²⁰ This led to the enactment of the Prevention of Terrorism Act, 2002 (POTA) by the Parliament of India. The Act was introduced with the explicit objective of strengthening the legal regime to effectively prevent and combat terrorist activities and to bring to justice individuals and organizations engaged in terrorism. Drawing significant inspiration from its predecessor, the lapsed TADA, POTA empowered authorities with wide-ranging investigative and prosecutorial tools while incorporating certain procedural safeguards. Among its key provisions was the authority granted to special courts to detain suspects for a period extending up to 180 days, thereby significantly extending the usual period of custody permitted under the Code of Criminal Procedure.²¹ This prolonged detention without filing a formal charge sheet, however, raised concerns over potential abuse and infringement of fundamental rights.

One of the defining features of POTA was the explicit criminalization of fundraising for the purpose of terrorism, categorizing such financial activities as terrorist acts in themselves. This broadened the scope of anti-terror operations by targeting the financial networks and support systems that sustain terrorist organisations. Furthermore, POTA introduced a dedicated chapter focused on terrorist organizations, giving the central government the authority to maintain and update a list of banned organizations whose members and associates would be subject to prosecution under the Act.²² The Union Government was also vested with complete discretion to add or remove names from this list, reflecting its central role in national security policymaking and enforcement under this legislative framework.

Despite its intentions and some procedural safeguards—such as a review committee to examine wrongful application of the law—POTA soon became the subject of widespread criticism due to its misuse, especially by various state governments. Allegations emerged of the Act being used to target political opponents, religious minorities, and marginalised communities under

²⁰Walker, C., 1997. Constitutional Governance and Special Powers against Terrorism: Lessons from the United Kingdom's Prevention of Terrorism Acts. *Colum. J. Transnat'l L.*, 35, p.1."

²¹ Ibid

²²"O'Loughlin, M.A., 2020. Terrorism: The Problem and the Solution—The Comprehensive Terrorism Prevention Act of 1995 1. In *Bioterrorism: The History of a Crisis in American Society* (pp. 149-166). Routledge."

the pretext of national security.²³ The admissibility of confessions made to police officers, the scope for preventive detention, and the broad definitions of “terrorist act” and “terrorist organization” were flagged as highly susceptible to arbitrary and discriminatory enforcement. Human rights organisations, legal scholars, and civil society advocates repeatedly expressed concerns that POTA was being employed as a tool of state oppression rather than a genuine counter-terrorism measure. In view of the mounting evidence of abuse and in the interest of restoring public faith in democratic and constitutional governance, the Union Government led by the United Progressive Alliance (UPA) eventually decided to repeal POTA in 2004.²⁴

While the repeal was welcomed by many, certain provisions of POTA—particularly those relating to the proscription of organizations and the financing of terrorism—were subsequently incorporated into amendments to the Unlawful Activities (Prevention) Act, 1967 (UAPA), thereby ensuring the continuation of counter-terror mechanisms in a modified form. The rise and fall of POTA serves as a critical lesson in the delicate balancing act required between ensuring national security and upholding the constitutional guarantees of individual liberty, due process, and protection from executive overreach.

Unlawful Activities (Prevention) Act, 1967

In the wake of persistent threats posed by terrorism and in light of increasing international obligations, the Government of India, in 2004, opted to strengthen the Unlawful Activities (Prevention) Act, 1967 (UAPA), which had hitherto served as the primary statute dealing with unlawful associations and activities prejudicial to the sovereignty and integrity of India.²⁵ The amendment sought to align India’s domestic counter-terrorism framework with international legal standards, especially the guidelines laid down by the Financial Action Task Force (FATF), a global inter-governmental body tasked with combating money laundering and terrorist financing. This legislative overhaul introduced comprehensive changes, notably by inserting specific chapters that criminalized the raising of funds for the commission of terrorist acts as well as the holding or concealment of proceeds derived from terrorism.²⁶ In addition, the 2004 amendment expanded the scope of culpability to include membership of a terrorist organization, provision of support to such an organization, and raising of funds for its benefit, thereby addressing not only the acts of terrorism but also the broader ecosystem that enables and sustains terrorist infrastructure.

Another significant modification brought about by the 2004 amendment was the extension of the period available to law enforcement agencies to file a charge sheet, enhancing it from 90 days to 180 days, subject to judicial approval. This reflected a pragmatic response to the

²³ Ibid

²⁴“Walker, C.P., 1983. The Jellicoe Report on the Prevention of Terrorism (Temporary Provisions) Act 1976. *Mod. L. Rev.*, 46, p.484.”

²⁵“Nair, T., 2020. Weaponisation of Sedition and the UAPA to Curb Free Speech in India. *Issue 6 Int'l JL Mgmt. & Human.*, 3, p.1132.”

²⁶“Chakraborty, N. and Deshpande, A., 2021. Assessing the Unlawful Activities (Prevention) Act, 1967 (UAPA) and Its Impact on India's Prison Justice System. *Issue 4 Int'l JL Mgmt. & Human.*, 4, p.3401.”

complexity and transnational character of terrorism-related investigations, which often require coordination across jurisdictions and agencies.²⁷ Following the 26/11 Mumbai terrorist attacks in 2008, the UAPA underwent another critical amendment to expand the definition of “terrorist act” to include activities that posed a threat not only to human life or national integrity but also to India’s economic security. As a result, acts such as the counterfeiting of Indian currency were brought within the ambit of terrorism, acknowledging the use of economic destabilization as a tool of modern asymmetric warfare.²⁸

Furthermore, the 2008 amendment included provisions that criminalized the procurement, possession, and movement of weapons and explosives intended for terrorist use, thereby tightening control over the instrumentalities of terrorism.²⁹ This was supplemented by provisions empowering designated courts to attach, seize, or forfeit properties and assets suspected to be the proceeds of terrorism, thereby cutting off financial lifelines that could be used to perpetuate further attacks. In 2012, further amendments were made to broaden the scope of terrorist activities and bring more categories of offenses and organizations under the UAPA’s regulatory net, thereby making the statute more comprehensive and dynamic. These successive amendments illustrate the Indian State’s ongoing legislative response to the evolving nature of terrorist threats, seeking to strike a balance between effective enforcement and compliance with constitutional and international human rights obligations.

IV. Human Rights Concerns

Beginning after the year 2004, it is possible to assert that significant modifications to the UAPA statute began to take effect. In lieu of the repeal of POTA, which was a promise made by the UPA administration during their election campaign, the change that was enacted in 2004 was a substitute for the abolition of POTA. The term of “unlawful activity” was significantly altered by the modified UAPA, which also incorporated the definitions of “terrorist act” and “terrorist organisation” that were previously included in the POTA that was abolished. Additionally, the idea of a “terrorist gang” was established.³⁰ On the surface, it seemed as if punitive measures such as the POTA and TADA were being carried out, however it was discovered that numerous clauses from the POTA were simply reproduced in the amendment to the UAPA.

The terrorist assault that took place in Mumbai in November 2008, on the other hand, stoked public opinion and brought attention to the severity of the law in situations involving terrorist strikes. Because of this specific occurrence, some of the most abusive clauses that were specified in POTA and TADA were brought back into effect.³¹ These provisions were the reason

²⁷ Ibid

²⁸“Mathur, A., 2021. The Statutory Approach to Counter Terrorism in India: From MISA to the UAPA. *Supremo Amicus*, 24, p.290.”

²⁹ Ibid

³⁰“Bedi, J., 2022. Tenuous Legality: Challenges within the Anti-Terrorism Laws in India. *Issue 1 Indian JL & Legal Rsch.*, 4, p.1.”

³¹“Mathur, A., 2021. Countering Terrorism or Suppressing Dissent: A Critical Analysis of the UAPA. *Issue 3 Int'l JL Mgmt. & Human.*, 4, p.5431.”

why those acts were eliminated in the first place that they were mentioned. The amendment that was passed in 2008 expanded the definition of the term "terrorist act." It included the following provisions: under section 43A, they had the authority to arrest anyone unless there was sufficient evidence to prove otherwise; it extended the pre-charge detention period to 180 days; it further gave the courts the right to reject bail if the court deems any evidence to be "prima facie" true; the presumption of innocence and the right to a fair trial, which is also a constitutional right, were denied to the accused; and under section 51A of the bill, the government has the authority to "freeze, seize, attach, and prohibit" the funds of the individual accused.³²

The UAPA amendments of 2008 were enacted despite the fact that all of these measures were in direct disagreement with the United Nations rapporteur on terrorist acts, as well as with the International Covenant on Civil and Political Rights (ICCPR), and even with some of the basic rights that are outlined in the Indian constitution. In a dynamic democracy such as India's, the elected leaders lacked vision, which resulted in the proliferation of exploitative laws that were convenient and partisan for all administrations. This led to the development of exploitative laws.

In addition to this, On February 3, 2012, the central government made yet another effort to violate the rights of individuals by issuing a notice on the establishment of a specialist entity known as the National Counter Terrorism Centre (NCTC).³³ The UAPA is granted permission to utilise its authority to search, arrest, and other actions without first conferring with the respective state governments. The statute was made more stringent by the amendment that was passed in 2012, and there is now just a slim chance of being exonerated.³⁴ India joined the Financial Action Task Force in 2010, with the intention of combating money laundering and the funding of terrorist organisations. India intended to put the law that was developed by this task force into effect by the year 2012. In accordance with the rules that were established by this task group, a bill was approved to make modifications to the UAPA. Through these revisions to the UAPA, identical provisions to those of the POTA and TADA, which had been annulled at some time owing to their hegemonic inclinations, were being reintroduced during this era. It is essential to have a clear understanding of this fact.³⁵ As can be seen in the pages of EPW, several incidents of individuals who have been accused under the UAPA bring forth the absurdity and extremes of this legislation, as well as the sort of pain that those who are now being tried have experienced.

After the year 2012, the most recent modification that was made to the UAPA granted the Director General of the National Investigation Agency the authority to attach assets that were obtained via the profits of terrorism. A wider range of people are included in the definition of a terrorist, and the government is given the authority to label individuals as terrorists as a result

³²“Roy, P.K., 2023. An Analysis of Unlawful Activities Prevention Act, 1967 in the Light of Constitutionalism in India. *Issue 1 Indian JL & Legal Rsch.*, 5, p.1.”

³³ Ibid

³⁴ Ibid

³⁵“Nandakumar, S.M., 2023. Counterterrorism Legislations and India: Patent Inconsistencies and the Quest for Uniform Judicial Interpretations. *NUALS LJ*, 17, p.136.”

of this measure. The only entities that could be identified in this manner prior to the Amendment were organisations; people were not included in this category. With the amendment that was passed in 2019, the authority of the centre was further increased, and the definition of a terrorist or an act that may be considered a terrorist act was muddled.³⁶ During the decade of the 2000s, the category of individuals charged under the UAPA became even more ambiguous, and the definition of a political prisoner expanded to include almost anybody who challenges authority and, as a result, irritates it to the point where they are subjected to arbitrary incarceration and forced to give up their fundamental liberties.

The UAPA is a harsh statute; but, when it comes to those who are members of disadvantaged groups or who are from minority groups in India, this becomes even more problematic and the act becomes more exploitative. When the government has unrestricted authority and the people are denied their right to a fair trial, the act becomes a powerful weapon for the government, particularly when the government has the ability to rule without restriction.³⁷ It does not matter what the actions of those accused may be; the UAPA is a painful weapon in the hands of the government since it does not provide a proper trial and the government has unrestrained suspicion of the accused. The COVID-19 outbreak made the situation even more worse, as individuals who were charged of violating the UAPA were sent in prison and their bail hearings were further delayed. To make things even more difficult, the circumstances of the prisons and the conditions of the inmates who were housed inside those jails likewise became much more deplorable than they had been in the past. Right before the second wave of the pandemic in 2021, a letter was addressed to the Chief Justice of the Delhi High Court. In the letter, it was noted that the jail capacity at a prison like Tihar had its prisoner population reach up to 20,000, which is twice as much as its original capacity. This letter makes reference to the appalling circumstances that exist inside India's jails with regard to the health infrastructure.

V. Balancing Security and Human Rights

The declaration of Pakistan as a terrorist country has been something that India has consistently advocated for in international forums. Since 1992, it has been bringing this matter to the attention of the United States of America in order to declare Pakistan to be a state-sponsor of international terrorism in accordance with the laws of the United States and to take punitive action against it.³⁸ In point of fact, Pakistan was included on a watch list of states that were suspected of being sponsored by international terrorist organisations by the Clinton administration in Washington, DC, in the year 1993. Pakistan's solid has always been used to spread terrorist propaganda, and this has been the case. Pakistan has been responsible for the loss of civilians and security personnel, as well as the damage of property, as a result of its proxy war. Therefore, India need to give some thought to the possibility of calling Pakistan a terrorist state. In light of this, the House of Representatives passes a law that designates some

³⁶ Ibid

³⁷ Ibid

³⁸“Deep, A. and Rastogi, N., 2011. Terrorism as a new challenge to criminal Law and 2008 amendment to the unlawful activities (Prevention) act [UAPA] 1967: A critical study of ‘No confession provision’. *VIDHIGYA: The Journal of Legal Awareness*, 6(1and2), pp.50-56.”

countries as sponsors of terrorism, and Pakistan need to be included on this list. As a consequence of this, economic, cultural, and commercial links with Pakistan will be severed, and sanctions will be imposed on Pakistani people in the areas of law, economics, and tourism. Any person who is suspected of having connections to terrorist organisations need to be included on the list of terrorist organisations, as stipulated by the Unlawful Activities (Prevention) Amendment Act 2012. At the moment, in regard to Section 35 of the UAPA, there are 39 organisations that are included on the list of prohibited terrorist organisations. Keeping in mind that there has been a rise in the number of young people joining the Islamic State of Iraq and Syria (ISIS) and lobbying for religious causes, this provision is essential.³⁹

The purpose of this amendment is to guarantee that a prohibition is placed on individuals who are not affiliated with any terrorist organisation but who engage in acts of terrorism on their own will. In addition, this provision would be of assistance to the Indian government in the process of establishing a ban on representatives of terrorist organisations such as Hafiz Saeed and Masood Azhar. The JeM commander Azhar was identified for the Pathankot and Uri assaults, while Hafiz Saeed is suspected of being involved in the attacks that took place in Mumbai. JeM and LeT are both included on the list of entities that are prohibited under the UAPA.⁴⁰

In order to establish the charters, functions, and responsibilities of intelligence organisations, it is necessary to enact laws as part of the legislative process. It is recommended that the primary emphasis of this exercise be on eliminating the shortcomings that are present within the system, enhancing the coordination that exists across intelligence agencies, and guaranteeing improved accountability and supervision. At the national level, it will be beneficial for there to be better cooperation between the intelligence and security services when this occurs. Introducing laws in Parliament for the purpose of preventing, prosecuting, and protecting individuals from undocumented migration in India is something that has to be done. Illegal immigration to India from nations that are situated in close proximity to India, notably Bangladesh, is a significant danger to India's national security. Until this day, India has been the target of many terrorist assaults, and it has been shown beyond a reasonable doubt that the majority of these attacks were carried out by Islamic terrorist groups that had their headquarters in the nations that are India's neighbours. Not only do illegal immigrants pose a danger to national security, but they are also wreaking havoc on the economic of the country and have wreaked havoc on the social and political stability of the nation.⁴¹ In addition, the issue of unlawful migration was brought to the attention of the Supreme Court of India, which voiced grave concern over the issue of illegal migration from Bangladesh that was flooding into the nation. During the hearing of a Public Interest Petition on February 26, 2001, the Supreme Court, which was comprised of a bench of three judges, made the observation that Bangladeshi

³⁹“Dube, R.K., 2024. Laws Relating to Bail under UAPA & PMLA: A Jurisprudential Analysis. *Issue 2 Int'l JL Mgmt. & Human.*, 7, p.2653.”

⁴⁰“Srikanta, L., 2024. India's Anti-Terrorism Legislation and the reframing of Protests: A Discourse Analysis.”

⁴¹“Narain, A., 2021. *India's Undeclared Emergency: Constitutionalism and the Politics of Resistance*. Westland.”

migrants "are eating into the economy of the country and to a large extent, have become a security threat."

In the Northeastern states, particularly Assam and Tripura, which have been experiencing large-scale illegal migration from Bangladesh, there has been a common occurrence of illegal migration. This phenomenon has been seen in a broad manner. Illegal immigration is a contributing factor to the instability that exists in the area. Other security concerns, such as armed violence, drug trafficking, human trafficking, and the expansion of organised crime, ethnic conflicts, and political rivalries, all contribute to the instability. It is the cadres of the Jama'at-e-Islami of Bangladesh who have been active in Northeast India and who have been actively getting assistance from Pakistan. They are the most prominent terrorist group.

Immediate action is required to enact legislation that will prevent undocumented migrations, as well as to impose punishments that serve as a deterrent and to include provisions for punishments for those who assist in the enforcement of immigration laws. During the process of granting legal immigration status, the provision need to include the monitoring of criminal records and the verification of false documents for any illegal immigrant individual. Through the implementation of stringent regulations, India is able to strengthen its defences against illegal migration and protect its national borders.

Conclusion

Democratic societies all over the globe continue to face a persistent issue in the form of the intersection of national security imperatives and the protection of civil freedoms. This difficulty becomes more obvious within the scope of anti-terrorism legislation, as nations strive to protect their populations from dangers while also protecting the democratic ideals that they respect and cherish. The examination of India's constitutional framework as a prism through which to examine the country's approach to balancing national security and civil rights yields lessons that are applicable beyond the country's boundaries. The trip through the development of anti-terrorism law in India and the constitutional foundations upon which it is based highlights the difficult balance that has to be achieved. With its enshrining of the ideals of equality, freedom, and justice, the Constitution of India serves as a stalwart protector of civil freedoms. While a democracy must navigate the perilous seas of combatting terrorism while remaining faithful to its basic ideals, the real mettle of a democracy is tested exactly during times of security crises. This is because a democracy must do so while maintaining its essential beliefs. It is possible for the international community to gain useful insights from the lessons that may be gleaned from India's experience. One of the most important things to take into account is the need for precise definitions of the word "terrorism" within law, with the goal of avoiding wide and ambiguous phrasing that might lead to misuse. Any measures used to combat terrorism must be reasonable, essential, and subject to judicial review. This will ensure that the measures do not violate the rights that they are intended to safeguard. At the same time as efforts are being made to bring national security and civil freedoms into harmony, the role of the court is becoming more important.

The courts are the final arbiters—they are responsible for interpreting the provisions of the Constitution and ensuring that anti-terrorism legislation corresponds to the ideals outlined in the Constitution. 'Constitutionalism' is a notion that emphasises the importance of upholding the basic rights of people, especially when they are confronted with challenges.

Within the context of the Unlawful Activities (Prevention) Act (UAPA), it continues to be a tremendous task to find a way to strike a careful balance between the imperatives of national security and the preservation of civil rights. Despite the fact that it is of the utmost need to protect the country from possible dangers, it is of the utmost importance for legislators and policymakers to regularly reevaluate and improve the laws in order to guarantee that it supports constitutional principles and respects individual rights. In order to avoid the exploitation of UAPA provisions and to protect individuals from unjustifiable infringements on their civil rights, it is necessary to create more stringent supervision systems, frequent assessments, and transparent accountability measures. A sophisticated and adaptable strategy is required in order to achieve the ultimate goal of cultivating an atmosphere in which national security and civil liberties may coexist in a peaceful manner. This approach must take into account the ever-changing nature of threats and the ever-present significance of safeguarding the ideals of democracy and justice.

